IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 30820 of 2007(R)

LAR.314/2002 of PRINCIPAL SUB COURT,ALAPPUZHA

PETITIONER:

PADMAKSHIAMMA OF VARAMPALIL
PULIPRA VEEDU, KARUVATTA.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:

1. **THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ALAPPUZHA.**
2. **THE DEPUTY CHIEF ENGINEER, CONSTRUCTION RAILWAYS, ERNAKULAM.**
3. **GOPALAKRISHNAN NAIR, VARAMPALIL PULIPRA VEEDU,KARUVATTA.**
4. **SREEKUMARN NAIR,MEENATHE KIZHAKKETHIL, KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE.**
5. **GOPAKUMAR, REPRESENTED BY POWER OF ATTORNEY HOLDER K. CHELLAPPAN NAIR OF DO.....**
6. **SASIKUAR OF DO.....**
7. **VIJAYAKUMARAN NAIR OF DO.....**
8. **C.PADMAJA OF DO.....**
9. **C.BINDU OF DO.....**
10. **P. PADMAKUMARI AMMAOF MANSEELIL, KARUVATTA THEKKUM MURI, KUMARAPURAM VILLAGE,**
11. **MANOJ OF MANSEELIL, KARUVATTA THEKKUM MURIKUMARAPURAM VILLAGE.**

12. P.MANJU OF MANSEELIL, KARUVATTA THEKKUM MURI,KUMARAPURAM VILLAGE.

13. P.KARTHIKAKUTTY OF MANSEELIL,KARUVATTA THEKKUM MURI, KUMARAPURAM VILLAGE.

14. PRASANNA KUMARI, PULIPRA HOUSE,KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE.

15. P. PADMA DEVIL AMMA, PULIPRA HOUSE, KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE.

16. SIMI P. NAIR, SOUPARNIKA, MUTHUKULAM , THEKKEU, KARUVATT VILLAGE.

17. SEEMA P.NAIR, SOUPARNIKA, MUTHUKULAM THEKKU, KARUVATTA VILLAGE.

BY GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA
R2 BY ADV. SRI. N.B. SUNIL NATH- SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

==========

W.P.(C) No.30820 OF 2007

==========

Dated this the 23rd day of October 2007

JUDGMENT

This writ petition is preferred against the judgment of the Prl.sub Judge, Thodupuzha in L.A.R.No.314 of 2002. The court dismissed the reference as hopelessly barred by limitation and held that the claimants are not entitled to get any enhancement of compensation. Learned counsel for the petitioner has brought to my notice the decision of this court in ***Krishna Pillai v. State of Kerala(2007(2) KLT 588)*** wherein the court was considering the very same question. This court held that when a reference is made to the Land Acquisition Court, the Land Acquisition Court can only resolve the disputes as to the amount of compensation, whether the person is entitled to get apportionment of compensation etc. The court also held that the jurisdiction to decide the question as to whether the reference application was submitted within the time prescribed, is on the Land Acquisition Officer and not on the Court. This Court also considered whether a writ petition under Article 227 of the Constitution of India can be maintained and held that it can be done to correct an obvious mistake

committed by the court. In the case before me also the Land Acquisition Authority has referred the matter under the provisions of the Act to answer the reference. As held by this court in the decision referred to above, the jurisdiction of the court is only to find out regarding the adequacy or inadequacy of the compensation as the case may be.

2. The learned standing counsel for the 2nd respondent had raised objection regarding the maintainability of the writ petition. The counsel supports the order of the court below. The counsel also brought to my attention the decision of the Apex Court reported in ***Officer on Special Duty(Land Acqn) v. Shah Manilal Chandulal)(1996) 9 SCC 414.*** The facts of the case would reveal that an application for reference was made beyond the statutory period of six weeks and it was held that Section 5 of the Limitation Act would apply and the delay can be condoned. The Apex Court held that no such power is granted to the Land Acquisition Reference Officer to condone the delay. There is also observation to the effect that it is only a valid reference which gives jurisdiction to the court. Learned counsel for the petitioner has brought to my notice a decision of this court reported in ***Special Tahsildar(LA) v. Kallu(2000(3) KLT 71).*** A Division Bench of this Court has also referred to the decision of the Apex Court cited above. This court concluded that the question as to whether the

application was submitted in time or not is a matter to be considered by the Collector and not by the reference court. The Division Bench held that it is only that authority which can consider the question and not the court. So, in view of these decisions, I hold that the order under challenge is liable to be set aside and the matter has to be looked into by the Land Acquisition Court for fixing the compensation. Therefore, the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration. Parties are directed to appear before the court below on 24.11.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-